Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

Osama ASam@ Odeh, Petitioner
v.
United States, Respondent

On Petition for Writ of Certiorari
to the
5th Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

By: Osama ASam@ Odeh
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Arlington, Texas
76014
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Question Presented

Can a finding by a U.S. Judge that his court was a "victim of fraudulent conduct" by attorneys during the course of a 1998 criminal prosecution provide sufficient support to bring a "fraud upon the court" action pursuant to Rule 60b?

List of Parties

Respondent: The United States of America

Petitioner: Osama ASam@ Odeh

Jurisdiction

The judgment of the U.S. Court of Appeals for the Fifth Circuit was entered on 15 June 2006. The jurisdiction of this Court rests upon 28 U.S.C. §1254 (1).

Statement

Petitioner, a Middle-Eastern immigrant with limited English reading and writing proficiency at the time of his 1998 criminal guilty plea, respectfully contends that the recent dismissal by the Fifth Circuit of Petitioner=s Coram Nobis appeal appears to call for an exercise of this Court=s supervisory power.

Specifically, on 8 May 2006, in a *Bivins* action initiated by Petitioner and currently pending before U.S. Magistrate Paul Stickney in the Northern District of Texas as cause 4:06-CV-225, The Honorable United States Judge John McBryde found that with regard to the criminal prosecution of Petitioner in 1998:

> ASam [Petitioner Odeh] appears to be correct in his allegation that the criminal case was removed from the undersigned=s docket by reason of the entry by Heiskell of an appearance as Sam=s attorney in the case. Thus, if the other allegations made by Sam are true, **the undersigned was a victim of fraudulent conduct on the part of [attorneys] Evans and Heiskell@**. [Please see Appendix, beginning on Pg. X, *et seq.*]

Yet, subsequently, on 15 June 2006 the Fifth Circuit dismissed Petitioner=s Coram Nobis appeal as "frivolous", despite twice receiving notice of Judge McBryde's extraordinary finding of attorney fraud, while holding that:

> AOdeh=s unsupported allegations are insufficient to bring an action based upon fraud upon the court.@ [See Appd.Pg. VIII]

Respectfully, Petitioner contends that a finding by a judge of the likely commission of fraud on his court by its officers is the strongest possible support for a Coram Nobis Motion and should suffice to compel reversal of the Circuit=s June 2006 dismissal.

Relevant Facts

On 9 June 2004, Petitioner filed his sworn Coram Nobis Motion alleging, *inter alios*, that:

1. Due to his limited English proficiency, Petitioner did not discover until after his release from prison that there were four elements the Government must allege in a misprision crime, including the commission of an act of concealment preventing earlier discovery of a felony. Petitioner accordingly alleged in his Coram Nobis Motion he had unwittingly pled guilty on advice of his retained counsel to a misprision charge in 1998, because the record shows the Government never accused him of having committed even a single Apositive act of concealment preventing the discovery by a government official@ of the purported underlying crime committed by his family members. [Petitioner's brothers were advised to plead guilty, and pled guilty, to rolling back odometers in their American facility solely on exported vehicles destined for Middle-Eastern nations which *do not criminalize* such conduct. One of Petitioner's brothers retained the same attorney, Mr. Timothy Evans, whom Petitioner also later retained]; and that

2. Petitioner had discovered, post-incarceration, that his retained defense counsel Evans, (a former Texas Asst. District Attorney with Mr. Richard Roper in the mid-90's previous to Roper's becoming chief of the Fort Worth division of the U.S. attorney's office) was the author of certain false affidavit, upon which sole Aevidence@ the Court based Petitioner=s sentence, as well as the sentences of his family members; and that

3. Petitioner had also discovered, post-release, the transcript of his cousin Alam=s January 1998 plea hearing in the same overall case, which hearing occurred just six months previous to the commencement of the related case against Petitioner in July 1998, wherein the Honorable Judge McBryde, (who presided over the prosecutions of each Odeh family member except Petitioner's), rejected the misprision plea agreement proffered on behalf of Alam while holding that it appeared to be an attempt by the attorneys involved to Aconceal[] and misrepresent[]@ facts concerning Alam=s offense; and that

4. Petitioner had also discovered post-incarceration that immediately after his Afirst appearance hearing@ held on 13 July 1998, his retained attorney Evans in combination with certain others including the U.S. Magistrate for the Fort Worth Division, appear to have falsified the Magistrate=s docket to incorrectly reflect that Petitioner had supposedly retained instead of Mr. Evans an attorney named Michael Heiskell and that Mr. Heiskell had supposedly appeared at Petitioner=s first hearing. Those falsifications resulted in the immediate clerical termination of the jurisdiction of Judge McBryde over Petitioner=s case and its removal to Dallas, pursuant to an extraordinary Special Order of the Judicial Council of the Fifth Circuit dated 31 December 1997, which banned Judge McBryde from hearing cases involving twenty-three named attorneys, including Mr. Heiskell.

[The transcript of Petitioner=s subsequent plea hearing before the Honorable Judge Robert Maloney on 3 Sept. 1998 shows that Judge made no inquiry as to whether evidence supported the guilty plea agreement secured from Petitioner. Petitioner contends the attorneys removed his case from Judge McBryde because they knew he would carefully analyze and reject their baseless misprision agreement against Petitioner, just as the Judge had rejected that proffered for Alam.]

When Petitioner's Coram Nobis Motion was dismissed by the District on the purported ground of Afailure to seek earlier relief@, then after it languished without any action taken by the Circuit on any motion filed for over eight months, Petitioner filed his *Bivins* action in March 2006, (4:06-CV-225), which was assigned to Judge John McBryde. On 8 May 2006 Judge McBryde held:

> ASam appears to be correct in his allegation that :he criminal case was removed from the undersigned=s docket by reason of the entry by Heiskell of an appearance as Sam=s attorney in the case. Thus, if the other allegations made by Sam are true, **the undersigned was a victim of fraudulent conduct on the part of Evans and Heiskell**. The undersigned does not have knowledge that Evans and Heiskell did what Sam contends they did with fraudulent intent. However, if they did their conduct would not be an isolated occurrence@, citing *United States v. Harmon*, 21 F. Supp. 2d 642 (N.D. Tex. 1998) and *United States v. Marshall*, 77 F. Supp. 2d 764 (N.D. Tex. 1999). [See Appd.. Pg. X]

Nevertheless, on 15 June 2006, The Fifth Circuit upheld the District=s dismissal, stating:

> ATo establish fraud upon the court, a petitioner is required to show an >unconscionable scheme or plan which is designed to improperly influence the court in its discretion=. Fierro v. Johnson, 197 F.2d 147 (5th Cir. 1999). Generally, >only the most egregious conduct, such as the bribery of a judge, or the fabrication of evidence by a party in which an attorney is implicated= will satisfy this standard.
>
> AOdeh=s unsupported allegations are insufficient to bring an action based upon fraud upon the court. Accordingly, we do not examine Odeh=s assertion that he had sound reasons for not bringing his fraud-upon-the-court claim earlier.@

[See Appd. at pg. VIII]

Reason for Granting the Petition

In the instructive early case of *United States v. Throckmorton*, 98 U.S., (8 Otto) 61, 25 L.Ed. 93 (1878), this Court discussed the effect attorney fraud has upon litigation:

> A...or where an attorney regularly employed corruptly sells out his client=s interest to the other side - these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing@.

Moreover, the Fifth Circuit has repeatedly cited this Court=s holding in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 288, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). For example, in *Browning v. Holloway*, 826 F.2d 335 at 343, (5th Cir. 1987) the Fifth held:

> AIndeed *Hazel-Atlas* might be read to suggest that once the determination is made that officers of the court have corruptly abused the judicial process, the court is not required to examine the effect that such conduct might have had on the ultimate judgment, but rather the court may rely on such conduct alone to set aside the judgment@.

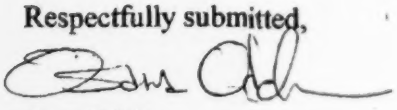
Since a U.S. Judge has determined that his Court was the likely victim of fraudulent conduct by at least two of its officers during the course of the criminal proceedings against Petitioner in 1998, the Circuit=s failure to consider that finding as sufficient to support Petitioner's Coram Nobis Motion appears to merit the equitable intervention of this Court to ensure the "usual course of judicial proceedings@ is followed.

Relief Requested

Petitioner requests this Court issue its Writ of Certiorari to the Fifth Circuit to determine whether a judge=s finding of likely fraud having been committed by officers of the court during a criminal prosecution

is sufficient foundation upon which to base a "fraud upon the court" Coram Nobis action pursuant to Rule 60b, *Hazel-Atlas*, etc.

Respectfully submitted,



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I. 16 November 2004 Opinion by U.S. Magistrate Bliel of the Northern District of Texas in regard to Petitioner's Coram Nobis Motion in a stand alone "CIVIL ACTION" he and Judge Fish jointly created 4:04-CV-436-M, "Osama Odeh, Petitioner, vs. United States of America, Respondent" just days before Judge Means held on 7 Dec. 2004 that said "CIVIL ACTION 4:04-CV-436" was created "improvidently".

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

"This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. [?!?] The Findings, Conclusions and Recommendation of the United States Magistrate Judge are as follows:

I. Findings and Conclusions

A. Nature of the Case

This is a 'Motion under 28 U.S.C. § 1651 to vacate sentence by a person not in federal custody', which is construed as a petition for writ of error coram nobis.

B. Parties

The Petitioner Osama "Sam" Odeh is a convicted felon and a former federal prisoner.

The Respondent is the United States of America.

C. Procedural History

On Sept. 3, 1998, Odeh pled guilty to misprision of felony in violation of 18 U.S.C. §4 in the United States District Court for the Northern District of Texas, Dallas Division, and was sentenced to five years' probation and a $5,000 fine. [Footnote 1. The Court takes judicial notice of the court records in Odeh's criminal case number 4:97-CR-105.] On January 18, 2001, his probation was

revoked and he was sentenced to eleven months' imprisonment and one year supervised release. Odeh did not seek direct review of his conviction or probation revocation or file a motion to vacate under 28 USC §2255. He is no longer in custody or under supervision. On June 9, 2004, Odeh filed this pro se motion to vacate sentence under 28 USC § 1651, which is construed as a petition for writ of error coram nobis. The government has filed a response, to which Odeh has replied.

D. Issues

Odeh asserts the following grounds for relief:

1. The convicting statute does not apply to the facts of this case:
2. His conviction was obtained by use of evidence obtained pursuant to an unconstitutional search and seizure;
3. He received ineffective assistance of counsel: and
4. The settlement agreement with the State of Florida precluded his subsequent criminal conviction in Texas under the double jeopardy clause.

E. Discussion

The writ of coram nobis, available to a petitioner no longer in custody who seeks to vacate a conviction, is an extraordinary remedy to correct errors of the most fundamental character. [cite omitted]. A writ of coram nobis will issue only when no other remedy is available and when sound reasons exist for failure to seek appropriate earlier relief. Odeh asserts that he did not seek earlier relief because he is "an absolute novice in regard to the U.S. Justice system" and, through "ongoing study of the facts and law of his case" requiring "a huge commitment from him and a huge amount of time", he just recently became aware "of apparent wrongdoing by many parties to the proceedings against his family" and "an apparent conspiracy between his own attorneys and those

of the government". Odeh's assertions fail to state "sound reasons" justifing [sic] his failure to seek appropriate earlier relief; thus, he is not entitled to the coram nobis remedy.

II. Recommendation

It is recommended that the motion to vacate, hereby construed as a petition for writ of error coram nobis, be denied.

III. Notice of right to object to proposed findings, conclusions and recommendation and consequences of failure to object

IV. Order

Under 28 U.S.C. § 636, it is ordered that each party is granted until December 7, 2004, to serve and file written objection to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further ordered that if objections are filed and the opposing party chooses to file a response, a response shall be filed within seven days of the filing date of the objections.

It is further ordered that the above-styled and numbered action, *previously referred to the United States Magistrate Judge for findings, conclusions and recommendation*, [**EMPHASIS ADDED. No referral was ever made to Magistrate Bliel by a U.S. Judge. See, infra, Appendix Page XVII infra for his self-referral**], be and hereby is returned to the docket of the United States District Judge.

Signed Nov. 16, 2004

/s/ Charles Bliel

U.S. Magistrate Judge

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II. **7 April 2005 Order by The Honorable U.S. District, Judge Terry Means in 4:97-CR-105(6), "United States of America v. Osama Odeh, aka Osama 'Sam' Odeh".** [Judge Means was assigned the case by the Nov 4 order of his Magistrate Charles Bliel, who had previously denied two separate motions by Petitioner to return his Coram Nobis Motion to the other Fort Worth Judge, The Honorable John McBryde, from whom it had been removed by apparent fraud involving Magistrate Bliel in 1998. Instead, in response to Petitioner's second motion to return the Coram Nobis Motion to McBryde, Mr. Bliel ordered the clerk to "randomly select" and assign the Motion to the only Fort Worth judge other than McBryde, i.e., Judge Means. Please note no mention is made in Judge Means' Order of Petitioner's claims of his actual innocence and attorney fraud.]

"OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS, DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS, AND RESOLVING OTHER PENDING MOTIONS

Pending and ripe for consideration is defendant Osama Odeh's June 9, 2004, 'motion under 28 U.S.C. § 1651 to vacate sentence by a person not in federal custody", which was construed as a petition for writ of error coram nobis under the All Writs Act, 28 U.S.C. § 1651. In consideration and review of the petition for writ of error coram nobis, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. Odeh's petition for writ of error coram nobis under 28 U.S.C. § 1651 filed on June 9, 2004, the government's response thereto filed August 16, 2004, and Odeh's reply filed on September 16, 2004;

2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on November 16, 2004; and

3. Odeh's written objections to the proposed findings, conclusions and recommendation of the United States magistrate judge filed on December 7, 2004.

The Court, after de novo review, concludes that Odeh's objections must be overruled, and that the petition for writ of error coram nobis should be denied, for the reasons stated in the magistrate judge's findings and conclusions, and as set forth herein.

The Supreme Court, in *United States v. Morgan*, (346 U.S. 502 (1954)), revived the ancient writ of error coram nobis by holding that the writ was available under 28 U.S.C. § 1651. The Court of Appeals for the Fifth Circuit has since explained:

'The writ of coram nobis is an extraordinary remedy available to a petitioner no longer in custody who seeks to vacate a criminal conviction in circumstances where the petitioner can demonstrate civil disabilities as a consequence of the conviction, and that the challenged error is of sufficient magnitude to justify the extraordinary relief.' (*U.S. v. Esogbue*, 357 F.3d 5325 (2004)).

A writ of error coram nobis will issue only when 'no other remedy is available and when sound reasons exist for failure to seek appropriate earlier relief'. (*Esogbue*, 357 F.3d at 355). Failure to have pursued the claim through a motion under 28 U.S.C. § 1651 is not a 'sound reason'.[1]

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[1]. *Esogbue*, 357 F.3d at 535, (noting that any claim by the inmate that he would be unable to satisfy the standards for filing a successive § 2255 motion while in custody is not a 'sound reason"), citing *Matus-Leva v. U.S.*, 287 F.3d 758, 761 (9th Cir.) ('A petitioner may not resort to coram nobis merely because he has failed to meet the AEDPA's gate-keeping requirements. To hold otherwise would circumvent the AEDPA's overall purpose of expediting the presentation of claims in federal court and enable prisoners to bypass the limitations and successive petitions provisions'), cert. den'd, 537 U.S. 1022 (2002).

Odeh offers no explanation for why he failed to ever seek relief under 28 U.S.C. § 2255, and argues that he only recently became aware of his claims. Such arguments are not sufficient to invoke the extraordinary coram-nobis remedy. As Odeh has not met the standard to be entitled to extraordinary relief through a petition for writ of error coram nobis, the petition must be denied.[2]

Apparently realizing that he was not entitled to relief through a writ of error coram nobis, Odeh alternatively argues in his written objections, for the first time, that he is actually trying to obtain relief through Rule 60(b) on the basis that he was the victim of a 'fraud upon the Court'. (Objections at 1-2) Odeh apparently refers to Federal Rule of Civil Procedure [FRCivP] 60(b), which authorizes a court to grant relief from a judgment in a civil case. Odeh purports to use such rule to challenge the judgment of conviction in this criminal case. But the Federal Rules of Civil Procedure 'govern the procedure in the United States district courts in all suits of a civil nature'. [Fed. R. Civ. P. 1.] Because Rule 60(b) allows a party to move for relief only from a judgment or order in a civil case, Odeh cannot challenge his criminal conviction or sentence in this case under FRCivP 60(b).[3] Odeh is thus not entitled to relief under FRCivP (60(b).

It is therefore ORDERED that the findings, conclusions, and recommendation of the magistrate judge should be, and are hereby, ADOPTED.

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2. Alternatively, even to the extent Odeh could satisfy the procedural standards for seeking a writ of error coram nobis, he is not entitled to relief on any of the grounds asserted, for the reasons stated in the government's August 16, 2004 Response at pages 2-5.

3. See *U.S. v. Neal*, NO.3:01-CR-131-M, 2004 WL 924500, at 1 (N.D. Tex. March 1), 2004); see also *U.S. v. Olivares*, No.3:98-CR-385-H, 2002 WL 1822944, at 1 (N.D. Tex. Aug. 6, 2002); see generally *U.S. v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998)....

It is further ORDERED that Odeh's June 9, 2004, petition for writ of error coram nobis under 28 U.S.C. § 1651, be, and is hereby, DENIED.

Signed April 7, 2005.

/s/ Terry Means
U.S. District Judge"

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III. Fifth-Circuit Order of 15 June 2006 Dismissing Petitioner's Coram Nobis appeal in Circuit cause 05-10764, "United States of America, Plaintiff-Appellee v. Osama Odeh, Defendant-Appellant" [Please note again no mention is made of Petitioner's explicit, non-conclusory sworn allegations of attorney fraud and his actual innocence.]

"APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORHTERN DISTRICT OF TEXAS USDC NO. 4:97-CR-105-6"

"Osaham [sic] Odeh appeals the district court's denial of his motion under 28 U.S.C. § 1651 to vacate sentence by a person not in federal custody wherein he sought to challenge his 1998 guilty-plea conviction for misprision of felony. Odeh argues that the district court should have construed his filing as a motion based on "fraud upon the court" which may be brought at any time.

To establish fraud upon the court, a petitioner is required to show an "unconscionable scheme or plan which is designed to improperly influence the court in its discretion." Fierro v. Johnson, 197 F.3d 147, 154 (5th Cir. 1999). Generally, "only the most egregious conduct, such as the bribery of a judge, or the fabrication of evidence by a party in which an attorney is implicated" will satisfy this standard.

Odeh's unsupported allegations are insufficient to bring an action based upon fraud upon the court. See id. at 154. Accordingly, we do no examine Odeh's assertion that he had sound reasons for not bringing his fraud-upon-the-court claim earlier.

Odeh also argues that the district court never secured lawful jurisdiction over his Motion and thus its denial of his motion is without effect. This assertion is utterly without merit. This appeal is without arguable merit; it is dismissed as frivolous.

Odeh has filed numerous frivolous and unnecessary motions in this court. In his filings, Odeh suggests that a judge of this court is guilty of deceit and manipulation. Odeh also casts aspersions upon this court's clerk. This is contumacious conduct. *See Coghlan v. Starkey*, 852 F.2d 805, 808 (5th Cir. 1988). Odeh is hereby ordered to show cause, within 20 days of the date of this opinion, why a sanction in the amount of $500 and a restriction on his access to this court should not be imposed."

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IV. 8 August 2006 Order *issued by 5th Circuit after its mandate issued* 10 July 2005 in regard Petitioner's Coram Nobis Appeal, Circuit cause 05-10764, "United States of America, Plaintiff-Appellee v. Osama Odeh, Defendant-Appellant" [Please note, again no mention is made of Petitioner's claims of his actual innocence or extensive attorney fraud.]

"ON PETITION FOR REHEARING

"It is ordered that the petition of appellant Osama Odeh for rehearing is denied.

In this appeal appellant Osama Odeh has deluged this court with a flood of frivolous and unnecessary motions." [Not one of his twenty filings was ever addressed.] "In its opinion issued June 15,

2006, the court dismissed the instant appeal as frivolous and ordered Odeh to show cause why he should not be sanctioned. The clerk has received Odeh's response which is as disrespectful and insinuating as his other filings. Accordingly, it is further ordered that Osama Odeh is sanctioned in the amount of $500 to be paid to the clerk of this court. The clerk is directed to accept no further filings, including any attempt to further appellate review, in this or any appeals or original petitions filed in the future. If Odeh attempts to file a notice of appeal or original proceeding in this court the clerk will docket the filing for administrative purposes only. Any other submissions which do not show proof that this sanction has been paid will be neither addressed nor acknowledged.

If is further ordered that Osama Odeh may not communicate with the Fifth Circuit Clerk's staff or the Circuit Judges or their staffs in person or by telephone, email or facsimile transmission with regard to this or any other appeal or original petition. Any attempt at communication inconsistent with this order will result in further sanctions and restrictions."

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V. 8 May 2006 Order of recusal by The Honorable U.S. Judge John McBryde, Northern District of Texas, entered in *Bivins* action 4:06-CV-225, "Ali Odeh and Sam Odeh, vs. Richard Roper, et al.",wherein Judge McBryde holds that fraud was likely committed upon his court during the 1998 criminal case against Petitioner.

"Order"

This is an action brought pursuant to *Bivens* and 42 U.S.C. § 1983 by Ali Odeh ("Ali") and Osama "Sam" Odeh ("Sam"), collectively plaintiffs, against, among others, Timothy Evans ("Evans"), an attorney who, plaintiffs allege, once represented

Sam in the criminal case described in plaintiffs' complaint, and Michael P. Heiskell ("Heiskell"), another attorney who, plaintiffs allege, was shown of record as an attorney for Sam in the same criminal action.

The complaint filed April 28, 2006, as amended ("amended complaint") alleges a complex set of facts that plaintiffs maintain support their contention that Evans and Heiskell collaborated with government officials[4] to violate their constitutional rights. According to the allegations, Ali and members of his family, including his son Sam, were the largest exporters of high-quality, late-model used vehicles to Kuwait. Plaintiffs apparently maintain that their business was intentionally destroyed by collusive action of all the defendants named in the amended complaint in violation of plaintiffs' constitutional rights. They allege that the early aspects of the allegedly collusive action resulted in a criminal indictment filed on August 13, 1997, in the Fort Worth Division of this court against a corporation through which plaintiffs and their family conducted a part of their export business and several members of the family, including Sam. The indictment charged members of the Odeh family with one or more offenses pertaining to the tampering with the odometers of vehicles that were to be exported to Kuwait, and one of the family members with the making of false statement to a bank whose deposits were insured by the FDIC with respect to exported vehicles. The indictment was dismissed as to the corporation. Each of the indicted family members pleaded guilty in the late 1990's to one or more of the offenses charged by the indictment.

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4. Also named as defendants are two United States District Judges, a United States Magistrate Judge, the United States Attorney for the Northern District of Texas, an Assistant U.S. Attorney, the Clerk of the U.S. Court of Appeals for the 5th Circuit, an unidentified judge of the 5th Circuit, a court reporter employed by the U.S. District Court for North Texas, and other government officials.

By way of relief, plaintiffs seek (1) a declaratory judgment that the defendants, in deliberate and willful disregard of the limits of their lawful jurisdiction, engaged in acts outside their jurisdiction in support of a broad collusion to violate plaintiffs' constitutionally protected rights, (2) injunctive relief, and (3) money damages for actual losses of $149,000.000 and punitive damages of $150,000,000.

On May 2, 2006, plaintiffs filed a document titled 'Plaintiffs' Motion to Compel Production of Court Records...'.... In the course of making inquiry into the matters mentioned in the motion, and after having reviewed the allegations of the amended complaint, the undersigned has concluded that he should recuse. Bearing in mind that the preferred course is for a judge who is recusing to document the reasons for his decision, see *Hagan v. Coggins*, 77 F.Supp. 2d 776, 778 n.2 (N.D. Tex. 1999), the court is setting forth below his reasons for the recusal.

Plaintiffs alleged in their amended complaint that commencing in July 1998 Evans and Heiskell engaged in fraudulent conduct to defraud the court into thinking that Heiskell was Sam's attorney in the criminal case at Sam's initial appearance even though Evans was the one to whom Sam had paid a significant fee to represent him and who actually represented Sam at that time. Am. Compl. At 15017, pps 56-66. The district judge adversely affected by the allegedly fraudulent conduct is not identified in the amended complaint. However, the undersigned confirmed from the review he made of the court records as a part of his inquiry into the May 2 motion to compel, that plaintiffs are claiming that the conduct of Evans and Heiskell had as its goal causing the criminal case to be removed from the undersigned's docket and to be transferred to a district judge in the Dallas Division of the court.

Documents on file in the criminal case alleged with greater particularity the events to which plaintiffs refer at pages 15-17 of the amended complaint. In a document filed October 29, 2004,

titled 'Motion to Return Case to the Honorable Judge McBryde's Appellate Jurisdiction', Sam, who is referred to in the quoted language as 'Petitioner', made the following allegations:

> Petitioner's counsel [Evans] lied to him in order to justify a change of venue, claiming to Petitioner that he could not get justice in Judge McBryde's courtroom because that Judge supposedly harbored grudges against counsel Evans. In a manner unknown at this time to Petitioner, (Evans refuses to release his case file to Petitioner), his counsel secured a change of venue to Dallas, where Evans likely paid another attorney, from fees he received from Petitioner, to appear as counsel. In light of the facts that
>
> 1. The case originated in front of Judge McBryde's bench; and
> 2. Mr. Evans received $35,000 to represent Petitioner, just as Evans had already received $35,000 to represent Petitioner's brother, who Evans also advised to plead guilty in the same case; and
> 3. Evans falsely advised Petitioner, (and Petitioner relied upon that advice), that he could not get a fair trial in front of Judge McBryde; and
> 4. Evans appears to have kept the funds given him by Petitioner but substituted another attorney, Michael Heiskell, as attorney of record in Petitioner's case; and
> 5. Evans appears to have paid Heiskell from funds given him by Petitioner making Heiskell Evans' agent, (since Petitioner never paid Heiskell a dime or spent one minute preparing a defense of his case with Heiskell); and
> 6. Messrs. Evans and Heiskell appear to have conspired to manipulate, and succeeded in manipulating, forums securing transfer of the case

to Dallas while making a false record that Petitioner himself had retained Heiskell; and

7. That Judge McBryde remains as the judge of record over the case involving the underlying convictions of Petitioner's brothers; and

8. That Judge McBryde is fit and capable of reviewing cases arising before his bench, which are assigned to magistrates but then subsequently appealed to a judge,

Petitioner moves the case be correctly re-assigned to Judge McBryde's appellate jurisdiction, from whence it lawfully arose. Such equitable result will replace the parties in exactly the same positions held before Mr. Evans' apparently self-serving actions to manipulate forums.'

Mot. To Return Case to the Hon. Judge McBryde's Appellate Jurisdiction at 1-2.

Similarly, in a document filed in the criminal case on December 7, 2004, Sam made the following allegations:

- 'Moreover, Petitioner carefully alleged that all the officers of the court involved in the case against him knew or should have known that he

16. Paid Mr. Tim Evans [$35,000 in cash] to represent him after his brothers were jailed and before he came home from their dealership in Kuwait to support his brothers' families; and that

17. Mr. Evans had already represented Petitioner's brother Jamal in the same criminal case, (Evans had previously received $35,000 from the family for Jamal's 'defense'; and that

18. Mr. Evans sought to conceal his receipt of dual fees from two defendants in the same criminal case by substituting counsel of Evan's selection as a virtual "front man"; and that

19. To conceal his improper acceptance of dual fees, Mr. Evans chose as his surrogate an

> attorney who had sued the Honorable Judge McBryde of Fort Worth and was on a list of attorneys designated by order of the Circuit as not allowed to come before McBryde's bench, thus creating colorable cause to have the case transferred out of the jurisdiction of Judge John McBryde to the jurisdiction of Dallas, and thus concealing Evan's improper dual involvement; and that
>
> 20. Although Mr. Evans never made an official appearance in the record of the case, he appeared as spectator in court for the hearings in the case; and that
>
> 21. In spite of the fact Mr. Tim Evans made sure not to make an official entrance into the record of Petitioner's case, it was Mr. Evans who arranged the details of Petitioner's surrender to the U.S. Marshals and Customs officers before Petitioner returned from the Middle East to the U.S.; and
>
> 22. Mr. Evans also made the arrangements for bail with the same AUSA before Petitioner arrived back in the U.S.; and that
>
> 23. Mr. Evans and his chosen surrogate filed nothing other than three boilerplate motions in Petitioner's defense, one of those motions so unprofessionally crafted as to state: "Defendant Dr. Hernan Enrique Burgos hereby moves the court...", while never raising a single objection to the prosecution or raising a single defense of Petitioner at any time; and that...'

Pet'r's Objection to Findings, Conclusions and Recommendation of Magistrate and Mot. For Evidentiary Hr'g at 6-7.

Paragraph 19 of the language quoted immediately above has reference to the order of the Judicial Council of the Fifth

Judicial Circuit that is referenced in *U.S. v. Harmon*, 21 F. Supp. 2d 642, 644 (N.D. Tex. 1998). Sam appears to be correct in his allegation that the criminal case was removed from the undersigned's docket by reason of the entry by Heiskell of an appearance as Sam's attorney in the case. **Thus, if the other allegations made by Sam are true, the undersigned was a victim of fraudulent conduct on the part of Evans and Heiskell.** The undersigned does not have knowledge that Evans and Heiskell did what Sam contends they did with fraudulent intent. However, if they did, their conduct would not be an isolated occurrence.[5]

Title 28 U.S.C. § 445(a) provides that any judge of the United States 'shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The "impartiality" test relates to the attitude of the judge toward a party to the litigation, not the party's attorney. *U.S. v. Harmon*, 21 F. Supp. 2d at 645. Here, the allegations of plaintiffs against Evans and Heiskell might be viewed by some to raise a question as to whether the undersigned could be completely impartial in adjudicating their rights as parties to this litigation. The

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[5]. The undersigned has received reports, and has seen evidence, of other instances when an attorney named on the list accompanying the December 31, 1997, order of the Judicial Council was used for the purpose, sometimes for the sole purpose, of causing a case to be transferred from the undersigned's docket or to be assigned to the docket of the other [Fort Worth] judge instead of the undersigned's. *U.S. v. Harmon*, 21 F. Supp. 2d 642 (N.D. Tex. 1998), is but an example of such an occurrence. In *Harmon*, Heiskell moved to be substituted as the attorney for the defendant shortly before trial and moved for recusal of the undersigned on the ground that the undersigned was obligated to recuse by reason of the Dec. 31, 1997, order of the Judicial Council. Other reported instances when recusal was sought by reason of the Judicial Council proceeding are discussed in *U.S. v. Marshall*, 77 F. Supp. 2d 764 (N.D. Tex. 1999).

undersigned has no doubt that he would be completely fair and impartial in adjudicating the rights of Evans and Heiskell, but to large extent the test is one of perception rather than fact.

Therefore, the undersigned hereby RECUSES and directs the clerk of court to make an appropriate reassignment of the above captioned case to another U.S. District Judge.

SIGNED May 8, 2006.

/s/ John McBryde

U.S. District Judge"

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VI. Petitioner's sworn 30 June 2006 Motion for Rehearing before the Fifth Circuit, which the Circuit found "disrespectful and insinuating"

"Preliminarily, Appellant extends his thanks to this Court for recently ruling on his appeal, despite its rather unpleasant outcome, to date. However, it appears the Court may have overlooked certain evidence, misapprehended certain facts, and certainly cannot be aware of a very recent ruling, all of which Petitioner respectfully requests the Court now consider:

Issue 1. Evidence submitted shows convincing proof of fraud on the Court

Petitioner respectfully contends that contrary to the Court's recent holding, he *has* supported his allegations of extensive fraud on the court by its officers pursuant to Rule 60(b), to wit:

A. Appellant has sworn under penalty of perjury that his retained attorney Tim Evans,[6] (a former Tarrant County D.A.),

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[6] Appellant swore in his Original § Coram Nobis Motion, pg. 4, that both he and his brother retained Mr. Evans, each with $35K in cash totaling $70K.

fabricated for the Government the 'only'[7] evidence of purported Kuwaiti victims and loss upon which his brothers' conviction for resetting odometers were based.[8] (Appellant pled guilty to 'misprision' of his brothers' alleged crime.)

Had such fabrication by Evans not occurred in the underlying case against Appellant's brothers, Appellant contends there would have been NO evidence upon which their convictions or sentences could have been based, which should have, in turn, mooted the misprision charge to which Appellant was also improperly advised by the same Evans to plead guilty.

B. Appellant has sworn under penalty of perjury that his retained counsel Evans participated in a collusion to improperly remove his case from the bench of the Honorable John McBryde because (1.) Appellant's retained counsel Evans and others desired Appellant to plead guilty even though the record shows he never committed a single 'positive act of concealment' to justify such conviction, and since (2.) Judge McBryde had already rejected

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[7] The Probation Office's PreSentence Report, [attached to the Motion for Rehearing to the Circuit as Exhibit A], was sealed from Appellant, and was only disclosed to Appellant upon his request by order of this Circuit after appeal to the Circuit was perfected in June 2005. Therein, at the top of page 9, Appellant discovered the fact his retained defense attorney Evans fabricated for the Government the 'ONLY' evidence of purported victims and their loss in the entire case, the utterly false purported affidavit of Mr. Abdel Mahmoud.

[8] As noted in the PreSentence Report, the Government conceded Appellant's family never sold a car with reset odometers to American buyers, [PSI, page 3, ppg 9 and page 9, ppg 37.] However, in Kuwait, it is not illegal to reset odometers or sell cars with reset odometers. [PSI, pg. 7-8] All imports are assumed by Arabs to have reset odometers, thus they determine value instead upon make, model, year, visual inspection and bumper to bumper warranties such as those provided by the Appellant's family. [PSI, pg. 7, ppg. 28].

another improper misprision plea agreement in the same overall case,[9] while the Judge held the rejected plea appeared to be an attempt by the attorneys to 'conceal[] and misrepresent[]' facts to the court.

Appellant has sworn[10] that others participating in the 1998 collusion to remove his criminal case from Judge McBryde included Mr. Michael Heiskell and Magistrate Charles Bliel, who falsified his docket to give the incorrect appearance Appellant had retained Mr. Heiskell instead of Mr. Evans. After falsifying the record to make it appear Heiskell had been retained by Appellant, and further falsifying the record to show that Heiskell had supposedly appeared at Appellant's 'first appearance hearing' on 13 July 1998, the trio of court officers utilized the extraordinary 'Special Order' of 31 December 1997 by the Judicial Conference of the Fifth Circuit to terminate Judge McBryde's lawful jurisdiction and assign Appellant's case to another judge, who, the record

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[9] Appellant discovered the facts surrounding Judge McBryde's rejection of the improper plea agreement for Alam Odeh only after Appellant perfected appeal to this Court in June 2005. In October, 2005, Appellant ordered then studied the transcripts of his cousin's plea hearing before McBryde held on 8 January 1998 to try to discover the true reason why Appellant's counsel had decided to remove the case from McBryde. The facts related to McBryde's rejection of Alam's original plea agreement were, however, presented to this Court, with attached sworn affidavit as to the truthfulness of all facts alleged therein, on 9 January 2006 in Appellant's 'Motion to Amend Original § 1651 Motion'. That document may have been overlooked by the Court.

[10] Please see pg. 4, et seq. of Appellant's 'Motion to Amend Original § 1651 Motion', as sworn and filed in [the Fifth Circuit] on 9 January 2006.

shows, made no inquiry into whether facts supported Appellant's misprision plea agreement.[11]

Recently, on 8 May 2006, The Honorable Judge McBryde issued his recusal order[12] in a *Bivins* action still pending below, wherein he corroborates in part Appellant's astounding claim of the improper termination in 1998 of Judge McBryde's lawful jurisdiction, (Please see Order, pg. 7) holding that:

> 'Sam appears to be correct in his allegation that the criminal case was removed from the undersigned's docket by reason of the entry by Heiskell of an appearance as Sam's attorney in the case. **Thus, if the other allegations made by Sam are true, the undersigned was a victim of fraudulent conduct on the part of Evans and Heiskell.** The undersigned does not have knowledge that Evans and Heiskell did what Sam contends they did with fraudulent intent. However, if they did, their conduct would not be an isolated occurrence', (citing *U.S. v. Marshall*, 77 F. Supp. 2d 764, N.D. Tex. 1999, for other reported instances.)

Issue 1. Summary

Appellant contends the sworn allegations and evidence he has presented to ~~this Court, that~~ (1.) his attorney fabricated a certain false affidavit, that (2.) his attorney and others colluded to fraudulently remove his case from before Judge McByrde in order to secure a baseless misprision plea agreement from Appellant, (with powerful substantiation of Appellant's improper removal

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[11] A certified transcript of Appellant's plea hearing on 17 Sept. 1998 before the Honorable Judge Robert Maloney is available at the order of this Court.

[12] [Attached to the Motion to Rehear at the Circuit as Exh. C.]

claim made by Judge McBryde in his recent Order), are sufficient to demonstrate by clear and convincing evidence the appearance that officers of the Court have been participating in an 'unconscionable scheme or plan which is designed to improperly influence the court in its discretion", which types of schemes are mentioned in the excellent holding of this Court in *Fierro v. Johnson*, 197 F.3d 147, 154 (5th Cir. 1999), as justifying a Rule 60(b) action.

Issue II. Lack of trial court (Judge Means') jurisdiction over Coram Nobis motion

Appellant has presented court records and averred that Fort Worth Magistrate Charles Bliel, (the same Magistrate who Appellant claims falsified his docket in 1998 to reflect that Appellant had retained Mr. Heiskell instead of Mr. Evans in order to fraudulently terminate the lawful jurisdiction of Judge McBryde over Appellant's 1998 criminal proceedings), was also involved with others in a 2004 scheme to terminate the lawfully assigned jurisdiction of U.S. Judge Barbara Lynn over Appellant's Coram Nobis Motion upon its filing in June 2004. The object of the collusion appears to have been to prevent any U.S. Judge not involved in the collusion from securing jurisdiction over the Coram Nobis Motion, with its extraordinary non-conclusory allegations of judicial and attorney fraud.

In his 'order' of 17 June 2004,[13] Fort Worth Magistrate Mr. Bliel literally fabricated the fact Appellant had supposedly tendered a "$5.00 filing fee", then Mr. Bliel 'improvidently opened' [14] a new

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[13] Bliel Order of that date was attached to Motion to Rehear.

[14] Those are Judge Terry Means' descriptive words, found on page 7 of his masterpiece of imprecision, an Order he filed on 7 Dec 2004, [copy was provided Circuit as attachment to Motion to Rehear] wherein he attempts to put a good face on the confusion deliberately cause by Mr.

civil action wherein he sheaved Appellant's Coram Nobis Motion apart from its underlying criminal case which had been assigned to Dallas U.S. Judge Barbara Lynn upon the retirement of the Dallas Judge rendering judgment against Appellant, The Honorable Robert Maloney. Then Mr. Bliel literally ordered himself to make findings and a recommendation.

Although Appellant has alleged that other improper steps were taken by Mr. Bliel and others to provide him control over the Coram Nobis Motion upon its filing in 2004, the glaring lack of referral of the Motion by any U.S. Judge to Mr. Bliel should call into question not only his own jurisdiction over the Motion, but also the subsequent claim of jurisdiction made by Judge Means, since based directly upon the 4 November order of Mr. Bliel.

Attached hereto for the convenience of the [Circuit] Court, Appellant has provided a copy of the docket of the "CIVIL ACTION" case created by Mr. Bliel and others, in which they "improvidently" separated Appellant's Coram Nobis Motion from the underlying criminal case. It shows that no order of referral was ever made to Magistrate Bliel, thus likely invalidating any orders he made in the case, including his dated 4 November 2004 wherein he directs the clerk to place the case on the docket of U.S. Judge Terry Means. The absence of any order of referral to Magistrate Bliel thus appears to call into question Judge Means' subsequent claim to jurisdiction.

Bliel and others in their drive to prevent impartial U.S. Judges from viewing Appellant's Coram Nobis Motion. Judge Means goes on in said 7 Dec.2004 Order to unilaterally terminate the jurisdiction of fellow U.S. Judge Lynn, assign the entire underlying criminal case to himself, replace Appellant's Coram Nobis Motion therein where it should have been upon its filing in June 2004, then dismiss the "Civil Action" 'improvidently created' by Bliel to secure personal control of the Motion.

Issue II. Summary

If Fort Worth Magistrate Bliel never secured lawful jurisdiction over Appellant's Coram Nobis Motion (as properly filed in the Dallas court rendering judgment against him), but arrogated it unto himself by the ruse of his stand-alone "improvidently created" "CIVIL ACTION" which he then placed on the docket of Fort Worth Judge Means, Mr. Means' subsequent unilateral administrative termination of the lawful jurisdiction of Judge Lynn is as improper as his jurisdictional claim, since his authority is based on the 4 Nov 2004 'order' of Mr. Bliel.[15]

Relief Requested

Appellant respectfully request this [Fifth Circuit] Court to

1. Reconsider the record to determine if the sworn allegations and other evidence submitted by the actually innocent Appellant, including the very recent finding of Judge McBryde, have, in fact, supported his claim that officers of the court appear to have participated in a scheme to defraud both the court and Appellant, thus justifying Appellant's claim that his Coram Nobis Motion be viewed substantively as a proper Rule 60(b) motion pursuant to *Fierro v. Johnson*; and

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[15] There are only two Fort Worth Division Judges: McBryde and Means , who are implacable foes according to the Fort Worth Star Telegram front page article dated 31 January 1999. Magistrate Bleil knew that if either Judge McBryde or Judge Lynn controlled Appellant's Coram Nobis Motion, they would have likely investigated thoroughly the 1998 removal of Appellant's original criminal case from McBryde, as carefully alleged in said Coram Nobis Motion. Thus Mr. Bliel's 4 Nov. 'order', which purports to decree a "random selection" of a Fort Worth judge, was in reality a reverse-referral of the case away from Judge McBryde to Judge Means, McBrydes stated enemy, to ensure McBryde would never have power to reveal Bliel's 1998 acts. Judge Means terminated Judge Lynn's jurisdiction on his own hook, however.

2. Additionally, reconsider its determination that jurisdiction was properly acquired in the Court's below. More specifically, Appellant request this Court order the Honorable Judge Means to show proof of authority to unilaterally administratively terminate the jurisdiction of U.S. Judge Barbara Lynn over the Coram Nobis Motion, which he did in his Order of 7 December 2004. In the alternative, Appellant requests this Court order Judge Means to show proof his Magistrate received any order of referral from a U.S. Judge, or that at the time of Mr. Bliel's 2004 self-referral he had some general source of authority over Coram Nobis Motions.

Should the Court find for Appellant on either Issue set forth in this Motion for Panel Rehearing, he respectfully requests his case be remanded to the District for further proceedings.

Respectfully submitted,
/s/ Sam Odeh"
With Certificate of Service and Affidavit in Support of Motion

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VII. Charging "Information" against Petitioner in 1998.
"The United States Attorney charges:

On or about April 30, 1996, in the Fort Worth Division of the Northern District of Texas and elsewhere, the defendant Osama Odeh, with knowledge of the actual commission of a felony offense against the United States, that is, that Nael Odeh did knowingly and willfully cause the odometer of a motor vehicle, that is, a Chevrolet Caprice, VIN 1G1BL53E3PR139543, to be disconnected, reset and altered, with intent to change the mileage registered by the odometer, did knowingly and intentionally conceal and fail to disclose the same to any person in authority, under the United States.

In violation of Title 18, United States Code, Section 4."
Paul E. Coggins

United States Attorney
/s/ J. Michael Worley
AUSA

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VIII. 17 June 2004 Order of Magistrate Charles Bliel in the stand-alone "Civil action 4:04-CV-0436-M" he and Judge Fish created to give Mr. Bliel control of Petitioner's Coram Nobis Motion upon its filing in June 2004 while keeping it away from Judge McBryde, who would have found out about the Magistrate's 1998 manipulations resulting in the fraudulent transfer of the case against Petitioner from McBryde's bench. After his joint creation of the stand-alone "CIVIL ACTION", the Magistrate then referred it to himself in the utter absence of any order of reference by a U.S. Judge per 28 USC § 636(b) and without any general authority over Coram Nobis Motions by rule of the Northern District of Texas. Please note Mag. Bliel's Order also

1. Falsifies the tender by Petitioner of a purported $5.00 filing fee,
2. Misconstrues the Coram Nobis **Motion** as a "petition" rather than as a mere continuation of the underlying criminal case pursuant to published Northern Texas District Procedure found at http://156.124.32.206/crt_services/writ_error_coram.htm;
3. Creates a stand-alone "civil action" into which Mr. Bliel sheaves the Coram Nobis Motion, and which stand-alone "action" he then
4. Refers to himself in order change its outcome by ensuring Judge McBryde never reacquired his proper jurisdiction.

"CIVIL ACTION No. 4:04-CV-0436-M
ORDER PERMITTING PROCEEDING IN THE DISTRICT COURT SPECIFYING FURTHER ACTION BY THE CLERK OF COURT, AND ORDER AND INSTRUCTIONS TO PARTIES

(X) A filing fee in the amount of $5.00 has been tendered.

( ) Pursuant to the provision of 28 U.S.C. § 1915, permission is hereby granted for the above named petitioner to proceed *in forma pauperis* in this Court until judgment is entered herein.

It is therefore ORDERED that the clerk of the Court shall take the following indicated action and the parties shall comply with the following directives:

(X) A copy of this order and all pleadings of petitioner shall be served by mail on the United States Attorney for the Northern District of Texas. Responsive pleadings must be filed by her within sixty (60) days from the date of this order. A copy of all responsive pleadings should be served on petitioner.

Although Petitioner is not required to file a Reply, any Reply Brief must be filed within thirty days following service of Respondent's response/answer. Each paragraph of such reply brief must specify the precise paragraph or part of Respondent's brief to which reply is being made, and must be limited to reply to Respondent's argument. A copy of any reply must be served upon counsel for the Respondent, and a certificate reflecting such service shall be included in the reply. Under no circumstances will any statement or argument set forth in a reply brief be considered as a part of the pleading so as to advance new grounds for relief or to supplement any ground or support facts set out in the petition.

Thereafter, any further pleadings by Petitioner or the United States Attorney should only be with permission or by order of the Court.

After docketing, and issuance of process, this action shall be referred to Magistrate Charles Bliel, for further proceedings and/or findings and recommendation.

Signed this 17 day of June, 2004

/s/ Charles Bliel, U.S. Magistrate Judge"

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